

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID HUGHES,) Case No.: 11-CV-03991-PSG
v. Plaintiff,) **ORDER REMANDING CASE**
TELEGENT SYSTEMS USA, INC., ET AL.,) **(Re: Docket No. 25)**
Defendants.)

)

Before the court is Defendant Telegent Systems USA, Inc. ("Telegent") motion to dismiss the amended complaint of Plaintiff David Hughes ("Hughes") for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). This is not Telegent's first motion to dismiss. On November 8, 2011, the court granted Telegent's previous motion to dismiss the original complaint,¹ which included federal claims under the Americans with Disability Act and "Title VII" in addition to three claims under California state law.² The November dismissal order further granted leave to Hughes to file an amended complaint.³

¹ See Docket No. 21.

² See Docket No. 1.

³ See Docket No. 21 at 8.

1 Because the original complaint included both federal and state law claims, the court was
 2 satisfied that it could exercise supplemental jurisdiction over the state law claims pursuant to 28
 3 U.S.C. §1367. Indeed, this was the basis for Telegant removing the original complaint from Santa
 4 Clara Superior Court, where it was filed.⁴ The amended complaint, however, includes no such
 5 claim under federal law-- indeed Hughes includes no reference to federal law anywhere. This begs
 6 the question of whether this court's exercise of subject matter jurisdiction remains appropriate.
 7 Neither Telegant nor Hughes raise the issue of subject matter jurisdiction, but no matter: this court
 8 has an independent responsibility to assess its jurisdiction at all times.⁵

9 In reviewing the case law applicable to this circumstance, the court concludes that it may no
 10 longer exercise subject matter jurisdiction over this case. "Because only state law claims remains in
 11 Plaintiff's amended complaint, there is no basis for supplemental jurisdiction over the remaining
 12 state law claims."⁶ This is not a matter of discretion, as might be the case where the operative
 13 complaint includes federal claims that have been dismissed.⁷ Whether by design or otherwise,
 14 when Hughes elected to file his amended complaint without any federal claims or other basis for
 15 subject matter jurisdiction (such as diversity jurisdiction pursuant to 28 U.S.C. §1332), he divested
 16 this court of its jurisdiction and obligated it to remand this case without delay.⁸

17 **IT IS SO ORDERED.**

18

19 ⁴ See *id.*

20 ⁵ See *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17-18 (1951).

21 ⁶ *Nickerson v. Wells Fargo Bank*, No. C-10-01889 EDL, 2010 WL 3990743, at *2 (N.D. Cal. Oct.
 22 12, 2010) (citing *Pintando v. Miami-Dade Housing Agency*, 501 F.3d 1241, 1243 (11th Cir. 2007)).

23 ⁷ Cf. 28 U.S.C. § 1367(c).

24 ⁸ See *Carnegie-Mellon University, et al. v. Cohill*, 484 U.S. 343, 351-353, 108 S.Ct. 614, 620
 25 (1988) (explaining that remand generally will be preferable to a dismissal if the statute of
 26 limitations on plaintiff's state law claims has expired and remand may best promote values of
 27 economy, convenience, fairness and comity). Cf. *Robinson v. Bank of Am., NA*, No. C 10-0050
 28 VRW, 2010 WL 1729317, at *1 (N.D. Cal. Apr. 27, 2010) ("Where the amended complaint fails to
 state any basis for federal jurisdiction, the court must dismiss the case."). See also *Grable & Sons
 Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005) (stating that federal courts
 may find federal jurisdiction embedded in plaintiffs' state law claims only if those claims
 "necessarily raise a stated federal issue, actually disputed and substantial").

1 Dated: 4/23/2012

Paul S. Grewal

2 PAUL S. GREWAL
3 United States Magistrate Judge